

**UNITED STATES OF AMERICAN  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 26**

**STANDARD GYPSUM, LLC**

Employer

and

**Case 26-RC-8214**

**PAPER, ALLIED-INDUSTRIAL, CHEMICAL  
AND ENERGY WORKERS INTERNATIONAL UNION,  
AFL-CIO, CLC<sup>1</sup>**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding<sup>2</sup>, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.<sup>4</sup>

5. The following employees of the Employer may constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

**INCLUDED:** All production, maintenance, and quality control employees at the Cumberland City, Tennessee, facility.

**EXCLUDED:** All professional, office clerical, managers, and supervisors, as defined in the Act, at the Cumberland City, Tennessee, facility.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are the employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by PACE International Union.<sup>5</sup>

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759

(1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven days from the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the National Labor Relations Board, Region 26, 1407 Union Avenue, Suite 800, Memphis, Tennessee 38104-3627, on or before **October 27, 2000**.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **November 3, 2000**.

**DATED** October 20, 2000, at Memphis, TN.

/s/

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Ronald K. Hooks, Regional Director  
Region 26, National Labor Relations Board  
1407 Union Avenue, Suite 800  
Memphis, TN 38104-3627  
Phone: (901) 544-0018

1. The name of the Petitioner was amended at the pre-election hearing.
2. The Employer and Petitioner have each filed briefs which have been duly considered.
3. At the hearing, the parties stipulated that during the past 12 months, the Employer purchased and received goods in excess of \$50,000 at its Cumberland City, Tennessee, facility directly from points located outside of the State of Tennessee. The parties further stipulated that Standard Gypsum is a Texas limited liability company with its principal place of business in McQueeney, Texas and a manufacturing facility in Cumberland City, Tennessee, engaging in the manufacturing and non-retail sale of gypsum wall board.
4. The Employer, Standard Gypsum LLC, is located in Cumberland City, Tennessee. The plant is rather new as it has been in operation since early November 1999. It manufactures gypsum drywall, a construction material. The plant manager is Rick Daugherty (Plant Manager Daugherty) who was also the project manager in the designing and construction of the plant.

The plant is divided into six departments: safety, engineering, production, quality, maintenance, and accounting. The heads of these departments report directly to Plant Manager Daugherty. The three departments whose employees' status is at issue here are production, maintenance, and quality. The production department has five units: shipping, wet area, dry area, calcine, and miscellaneous. Rail is part of the shipping unit.

The production department operates with four crews during high production periods. Currently, due to production downturn, there are only three shifts. To avoid laying off employees, the Employer consolidated the four production crews into three rotating shifts, with one crew being divided among the other three crews every two months.

As management is concerned, each shift has a relief foreman and a foreman. There are also a general foreman and two superintendents, who work on a rotating schedule to ensure that at least one of them is available to cover a shift. In addition, working on the day shift (7:00 a.m. to 3:00 p.m.) are the plant manager, a production manager, a shipping supervisor, a maintenance manager, an electrical maintenance supervisor, a mechanical maintenance supervisor, a purchasing agent, and a quality control manager.

The unit consists of approximately 118 employees. While the Petitioner and the Employer agreed on the inclusion of 96 employees, they disagreed on the status of 22 others. The Petitioner contends that the following employees should be excluded because they are statutory supervisors:

<b>POSITIONS</b>	<b>No. OF</b>
• Relief Foreman	4
• Lead Rail Operator	3
• Shipping Lead	1
• Calcine Lead Operator	1
• Dry End Lead	4
• Wet End Lead	4
• Miscellaneous Lead	1
• Master Mechanic	1
• Master Electrician	1
• Storekeeper	1
<b>TOTAL</b>	<b>21</b>

The Petitioner also claims that the following employees should be excluded because they do not share a community of interest with the unit employees:

<b>POSITIONS</b>	<b>No. OF EMPLOYEES</b>
• Storekeeper	1
• Maintenance Planner	1
<b>TOTAL</b>	<b>2</b>

On the other hand, the Employer argues that these 22 employees should be included because they are not statutory supervisors and because they share a community of interest with the unit employees.

#### **A. Supervisory Status**

Section 2(11) of the Act defines “supervisor” as follows:

The term “supervisor” means any individual having authority, in the interest of the employer, to *hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline* other employees, or responsibly to *direct* them, or to *adjust* their grievances, or effectively to *recommend* such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. *Emphasis added*

To qualify as a supervisor, an individual needs to possess only one of the indicia. *Hydro Conduit Corp.*, 254 NLRB 433, 436 (1981). The Board pointed out that an employee does not become a supervisor merely because he or she possesses an indicium, but he or she must exercise

that indicium with “independent judgment on behalf of management, and not in a routine or clerical manner.” *Id.* at 437. More specifically, the Act requires that “a supervisor (1) have authority (2) to use independent judgment (3) in performing such supervisory functions (4) in the interest of management.” *Id.* (citing *NLRB v. Security Guard Service, Inc.*, 384 F.2d 143, 147-48 (5<sup>th</sup> Cir. 1967)). These are conjunctive requirements. The party asserting supervisory status has the burden of proving that such status exists. *Chrome Deposit Corp.*, 323 NLRB 961, 963 (1997). In determining an employee’s supervisory status, the Board must not construe the supervisory status “too broadly” because such a construction would effectively deny those employees the protection provided under the Act. *Hydro Conduit*, 254 NLRB at 437 (citing *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7<sup>th</sup> Cir. 1970)).

All employees are paid on a salaried basis and receive an identical benefit package. Employees are divided into two categories: exempt and non-exempt. All employees from the foreman level and higher are exempt employees and are not eligible for overtime premium and TIPS bonuses, performance-based bonuses that are available to non-supervisory employees. All employees below the foreman level, including the ones whose status is at issue here, are non-exempt employees and are eligible for TIPS bonuses.

While the human resources department makes the final decision in the hiring process, the Employer utilizes a team approach in interviewing job applicants. An interview team usually consists of a foreman, a lead, and an employee from the department that has the open position. The interviewers give each applicant a numerical score and rank the applicants accordingly. They then forward the final ranking to the human resources department where the interviewers’ findings are reviewed for completeness and accuracy. The human resources department may (or may not) make appropriate adjustment before making the final decision.

The Petitioner’s witness, electrician Steve Keel, testified that he interviewed one applicant for an electrician position and that other electricians also interviewed other applicants for positions in the department. Accordingly, given the Employer’s team approach, an employee’s interviewing of job applicants is not indicative of his or her supervisory status.

As discussed above, the human resources department makes final personnel decisions with input from the interviewing teams. Thus, the 21 individuals have no hiring authority. Neither may they transfer employees permanently. Some of these individuals may ask employees to move to different departments when the situation so demands. For instance, relief

foremen may ask a dry end employee to help out in the wet area during an “upset” condition such as a jam or mechanical malfunction. In other words, this employee movement is dictated by the condition of the operation. The record, however, does not indicate whether an employee below the classifications in dispute may independently obtain help from other employees in the plant during an upset condition.

Drafts of job descriptions were produced as Petitioner’s exhibits at the hearing. The Employer used these job descriptions to recruit employees at its job fair in late January 1999, which was approximately nine months before the plant went into operation. The Petitioner relied on these descriptions during the hearing and in its brief in arguing that the 21 individuals at issue are statutory supervisors. The words “oversee”, “supervise”, and “supervision” are used to describe responsibilities of the employees in these positions.

At the hearing, Plant Manager Daugherty testified that these job descriptions are generally accurate in describing what these employees do. He also pointed out that these are drafts that the Employer got from Temple-Inland, a parent company, for recruiting purposes and that they must be revised. Daugherty, however, stated that Temple-Inland and Standard Gypsum are different in both size and the type of equipment utilized in operation. Daugherty’s testimony is consistent in that there are items on the job descriptions that do not describe what goes on at Standard Gypsum. For example, many of these job descriptions call for periodic performance reviews, but both the Employer’s and Petitioner’s witnesses testified that job performance evaluations have not been done.

Moreover, “oversee” and “supervise” are words that may not necessarily describe what an employee actually does. As the Board has held, job descriptions suggesting the presence of supervisory authority are not given controlling weight. *Acme Markets, Inc.*, 328 NLRB No. 178, \*11 (1999). Therefore, the job descriptions do not relieve a party of the burden of proving that the supervisory status exists. *Id.* Accordingly, a determination of whether one is a supervisor should focus on what he or she actually does, and not on what is stated in the job description.

Furthermore, the Petitioner’s argument in the brief is inconsistent and unpersuasive on this issue. On the one hand, the Petitioner argues that Plant Manager Daugherty does not spend enough time in the plant to know what these employees actually do; therefore, his testimony should be discounted. On the other hand, the Petitioner relied on Plant Manager Daugherty’s testimony to support its argument that the employees in question are supervisors.

Plant Manager Daugherty testified that none of the 21 individuals has the authority to discipline employees and recommend disciplinary actions. They are required to work with employees to rectify the problems, and if they cannot do so, they must report the infraction or under-performance to the foremen. The foremen may then conduct an independent investigation to determine whether to take any disciplinary action.

In an attempt to refute Daugherty's testimony, the Petitioner presented the testimony of a dry end employee, Thomas William Douglas Mathis (Mathis). Mathis testified that relief foreman Gordon Pulley and dry end lead Danny Stringfield gave him a written warning for not checking in with them before leaving work at the end of the day. Mathis said that the "written warning" was in a narrative format and was not a form that the Employer uses in disciplining its employees. Mathis refused to sign the written warning and discussed the matter with his foreman, Sammy Moody (Moody). When Moody found out from Mathis that Mathis did not know that he was to check in before leaving, Moody told Mathis that the warning would not go into Mathis' personnel file. During the hearing, Plant Manager Daugherty contacted the plant human resources manager who verified that the written warning was not in Mathis' personnel file. This shows that relief foremen do not have the authority to independently discipline errant employees.

In sum, the Petitioner failed to establish that the 21 individuals in question have the authority to discipline other employees independently. The Petitioner's witness, employee Mathis, testified that the foremen, after conducting an independent investigation, overruled the relief foreman and the lead. In addition, that "written warning" did not go into his personnel file or adversely affect him. As the Board held in *Hydro Conduit Corp.*, a warning does not constitute "discipline" absent some showing of impact on employees' job status. 254 NLRB at 437.

In support of its argument that these 21 individuals are statutory supervisors, the Petitioner cited two Board decisions in its brief. The first decision is *Sears, Roebuck & Co.*, 304 NLRB 193 (1991), which directly contradicts the Petitioner's position. This case involved challenges to the ballots cast by, among others, eight employees. Finding that two of the individuals possessed no supervisory authority and six others exercised no independent judgment in performing their duties, the Board held that these individuals were not statutory supervisors. Accordingly, the Board ordered that the ballots of these individuals be counted. *Id.* at 199.



Similarly, the evidence in the instant case fails to establish that the 21 individuals in question are statutory supervisors.

The second decision that the Petitioner cited is *DTS Industries, Inc.*, 310 NLRB 957 (1993). This case involved challenges to four determinative ballots cast in an election. The Board found that the four individuals were supervisors because they exercised independent judgment in establishing job priorities, assigning work, approving requests for vacations and time off, effectively recommending employees for hire and layoff, and filling in for the manager regularly. These individuals also enjoyed higher wages and special privileges and benefits reserved for supervisors and managers. *Id.* at 957-58. Therefore, the Board sustained the challenge to their ballots.

As the first case contradicts its position, the Petitioner's position rests on the legal authority of *DTS Industries*. The Petitioner, however, failed to demonstrate in its brief how *DTS Industries* may serve to support its position. As set forth below, the 21 individuals at issue here do not carry the supervisory authorities that the four individuals in *DTS Industries* had. Moreover, they do not exercise independent judgment in performing their duties.

About wages, while it is true that the 21 individuals at issue receive higher wages than other employees in their respective departments, the Petitioner failed to show how this secondary indicium may indicate supervisory status. Furthermore, as the Board held in *Thrush Press, Inc.*, the fact that an employee receives a higher wage rate by itself does not confer on him or her supervisory status. 171 NLRB 575, 582 (1968).

POSITION	WAGE	WAGE	POSITION
Lead Rail Operator	\$11.66	\$10.34	Rail Operator
Shipping Lead	\$14.18	\$10.34	Rail Operator
Calcine Lead Operator	\$13.79	\$13.24	Calcine Operator
Dry End Lead	\$13.79	\$11.56	Dry End Operator
Wet End Lead	\$13.79	\$11.87	Mixer Operator
Miscellaneous Lead	\$13.53	\$9.22	Miscellaneous
Master Mechanic	\$17.52	\$14.67	Mechanic A
Master Electrician	\$17.52	\$14.67	Electrician A
Storekeeper	\$13.60	\$9.22	Miscellaneous
Relief Foremen	\$14.30	N/A	N/A

Concerning special privileges and benefits, as discussed above, *all* employees in the plant receive an identical benefit package that includes paid vacation, paid holidays, retirement benefits, and 401K. The Petitioner noted that many of the 21 individuals at issue have radios and company-issued cellular telephones. The Petitioner, however, failed to show the manner in which having a radio or cellular telephone may be considered a privilege or benefit to the employees in question. In the instant case, having a radio by no means is indicative of supervisory status because both mechanic Fellows and electrician Keel, the Petitioner's witnesses, testified that they also have their own radios at work.

#### RELIEF FOREMEN

The plant has four relief foremen; one relief foreman is assigned to a shift. They are non-exempt employees and, therefore, are eligible for overtime and TIPS bonuses. Relief foremen report to and receive instructions from foremen, who are their immediate supervisors and are ineligible for overtime and TIPS bonuses. There is no additional educational requirement for this position. The Employer, however, prefers people with some leadership experience.

Relief foremen function like rovers in that they move around in the plant to relieve employees or foremen. They do not have many assigned tasks so that they can be free to respond to "upset" conditions. They spend about 80 percent of the time doing various tasks around the plant. They also substitute for foremen in the latter's absence over a short period of time. However, if the foremen are absent for an extended period of time, either a general foreman or superintendent will provide additional supervision over the shift. Relief foremen also spend 20 percent of the time helping the foremen fill out reports, such as timesheets. The foremen check these reports for completeness and accuracy before signing off on them. If a foreman is absent, the relief foreman submits the reports to the superintendent. There is no specific report for them to fill out.

There is no dispute that relief foremen assign tasks to employees. Because relief foremen are to respond to "upset" conditions in the plant, they are authorized to assign available and capable employees to deal with the problem(s) and to ensure smooth operation. In other words, job assignments depend on the tasks (or situations) as well as the availability and ability of the employees. Plant Manager Daugherty also testified that relief foremen may not transfer employees to different positions permanently.

About employees' performance evaluation, relief foremen do not evaluate employees' performance. None of the Petitioner's witnesses testified to having received a performance evaluation from their relief foremen. Plant Manager Daugherty stated that the plant has not formally reviewed employees' performance in part because no formalized system has been implemented.

As for overtime, Plant Manager Daugherty testified that relief foremen may not independently approve overtime. If overtime is necessary, the foremen, superintendents, or managers would approve it.

The evidence fails to establish that relief foremen exercise any supervisory authority with independent judgment. Even though relief foremen substitute for their foremen in the latter's absence, the Petitioner failed to establish that they exercised supervisory authority regularly, substantially, and independently. As the Board held in *Chrome Deposit Corp.*, "[i]t is well established that persons who exercise limited supervisory indicia on an irregular or sporadic basis will not be found to be statutory supervisors." 323 NLRB at 963; *See also, Brown & Root, Inc.*, 314 NLRB 19, 20-21 (1994) (finding that insubstantial, irregular, and sporadic exercise of supervisory authority does not confer supervisory status.)

Concerning work assignments, the Petitioner has the burden of proving that relief foremen exercise independent judgment in assigning work to employees. To that extent, the Petitioner has failed. Testimonial evidence discloses that relief foremen dispatch employees to different areas during "upset" conditions in order to ensure smooth operation of the plant. As the Board held in *Brown & Root, Inc.*, assignment of work does not necessarily require an exercise of independent judgment but may merely indicate one's experience in working with various employees and the employee's possession of the required skill for a particular job. 314 NLRB at 21. Accordingly, relief foremen are not statutory supervisors and are included in the unit.

### LEAD RAIL OPERATOR

The plant has three lead rail operators who are employees of the shipping department. They are non-exempt employees and, therefore, are eligible for overtime and TIPS bonuses. They report to and receive instructions from the shipping supervisor or manager, who are exempt employees and are ineligible for overtime and TIPS bonuses. Applicants for lead operator

positions need not have additional education or work experience. They must, however, be able to drive forklifts.

During the normal course of operation, a lead rail operator works with two wrappers and three rail operators on a shift. They wrap materials and load and unload them onto or from trucks and rail cars. The lead rail operators are to ensure that these tasks are done properly by either working with the operators or by assigning operators to work on them. Lead rail operators spend from 10 to 15 percent of their time in wrapping operation and 50 to 60 percent as rail operating lead. They also spend about 10 percent of their time in the rail office. When an employee calls in, the lead would inform the shift foreman who then logs the absence in the book.

They may not grant leave; the shipping supervisor grants leave. Lead rail operators may authorize overtime only to the extent that there are deadlines to be met. For instance, when the leads realize that they cannot finish a shipping order by the end of a shift, they are authorized to keep the rail operators working in order to get a shipment out timely. This overtime is in effect required of all employees involved, and the authority exercised by the lead rail operators in this instance falls within a specified set of parameters established by the plant management. In other words, there is no exercise of independent judgment on the part of the lead rail operators themselves. In addition, they do not attend supervisory meetings.

The evidence fails to establish that the lead rail operators possess supervisory authority and exercise that authority with independent judgment. They spend between 60 to 75 percent of their time doing the same tasks as other operators. They have a rather routine set of tasks that includes wrapping, loading, and unloading materials. Furthermore, the record does not show that the lead rail operators fill in for their supervisor in the latter's absence. They do make job assignments to other operators, but job assignment only reflects their experience and competency rather than their supervisory status. *Chrome Deposit*, 323 NLRB at 963; *Brown & Root, Inc.*, 314 NLRB at 21. Therefore, the lead rail operators are not statutory supervisors and are included in the unit.

### SHIPPING LEAD

The plant has only one shipping lead. He is a nonexempt employee and, therefore, is eligible for overtime and TIPS bonuses. There is no additional educational requirement for this

position. Qualified applicants must possess some computer skills. He reports to the shipping supervisor who is not eligible for overtime and TIPS bonuses.

The shipping lead's primary responsibility is to know what and where things are in the warehouse. He spends the early part of his days counting boards and determines where the boards should go in the warehouse. (Boards go to designated locations and in accordance with the schedule of shipping orders.) He also reviews shipping orders to make sure that they are complete and correct. Shipping orders are generated by the sales department of Temple-Inland located in West Memphis, Arkansas.

The shipping lead may move employees from one area in the shipping department to another and authorize overtime when there is work to be done. Shipping orders in general dictate the work that must be done on a particular day, and the shipping lead has no authority to determine when work is to be completed. According to Plant Manager Daugherty, the shipping lead does not fill in for the shipping supervisor over an extended period of time. For instance, when the shipping supervisor went on his honeymoon, the Employer brought in a logistic manager from another plant to substitute for him. Furthermore, the shipping lead does not attend supervisory meetings.

The evidence fails to show that the shipping lead exercises any supervisory authority with independent judgment. His daily routine is determined largely by the shipping orders that he receives from the sales department. His duty is to fill the shipping orders and get them out timely, and this may involve the assigning of employees to do some of the tasks. Such repetitive, perfunctory, and routine work does not confer on an employee supervisory status. *Sears, Roebuck and Co.*, 292 NLRB 753, 754-55 (1989); *Chrome Deposit*, 323 NLRB at 963. Accordingly, the shipping lead is not a statutory supervisor and is included in the unit.

#### CALCINE LEAD OPERATOR

The plant has one calcine lead operator and four calcine operators. The calcine lead operator is a nonexempt employee and, therefore, is eligible for overtime and TIPS bonuses. There is no additional educational requirement for this position. The Employer, however, prefers people with higher mechanical and electrical aptitude. He reports to the general foreman who is not eligible for overtime and TIPS bonuses.

The calcine lead operator works side by side with a calcine operator to ensure that machines work properly and that the production operation runs smoothly. Their desks are next to each other. Calcine operators normally take their breaks in their work area because it is air-conditioned and because they want to stay close to the monitors. To go on break, the calcine operator simply moves back away from the desk to allow the lead operator to move over to relieve him. In addition to having the same duties that the calcine operators have, the calcine lead is responsible for the overall function of the department. Through training and monitoring, he ensures that the operators know how to operate the equipment properly. To communicate with calcine operators on other shifts, the calcine lead operator makes notes in a log book so that the calcine operators from other shifts may become aware of unusual situations as well as tasks to be done. The calcine operators also use this same method to communicate with the calcine lead operator as well as each other.

The calcine lead operator may not transfer employees from other departments into the calcine department without approval of a ranking member of management. Calcine operator Jason Burns testified that the lead operator does not usually assign work because the calcine operators know what to do. The calcine lead operator may not process the operators' leave requests, even though he may accept and forward them to the shipping manager to be processed. In addition, he does not keep the operators' attendance records or attend supervisory meetings.

The evidence fails to establish that the calcine lead operator exercises supervisory authority with independent judgment. He works closely with a calcine operator on his shift and does the same tasks. Because the calcine operators are experienced employees who know what to do, the calcine lead operator does not regularly assign tasks. This fact was noted by the Petitioner in its brief when it pointed out that the calcine lead operator "does make some assignments, but not as much as all of the other leads." As the Board held in *Williamson Piggly Wiggly*, a lead is not a supervisor "where the work in his department was routine and where the employees required little, if any, direction in completing their tasks." 280 NLRB 1160, 1166-69 (1986), *enfd.* 827 F.2d 1098 (6<sup>th</sup> Cir. 1987). Accordingly, the calcine lead operator is not a statutory supervisor and is included in the unit.

### DRY END LEAD

The plant has four dry end leads; one is assigned to a shift. They are nonexempt employees and, therefore, are eligible for overtime and TIPS bonuses. There is no additional educational requirement for the dry end lead positions. The Employer, however, prefers candidates with some leadership skills. Of the four dry leads currently at the plant, three were promoted from within. They report to shift foremen who are not eligible for overtime and TIPS bonuses.

Dry end leads are responsible for the overall movement of boards from the dryer through the dry end and into the warehouse. They must also ensure that the machines work properly and that the transition from one type of board to another is efficient. They work along with other employees in the department and relieve employees when the employees go on breaks. Their daily routine resembles that of the employees in the department rather than the shift foremen's.

They can assign employees to different machines or get help from other departments during "upset" situations. This depends on the problems and availability as well as ability of the employees. According to Plant Manager Daugherty, it is a primary responsibility of everyone in the plant to work together during "upset" situations in order to get the plant up and running again. They must still report the problems to shift foremen. They may not approve leave requests. They do not attend supervisory meetings or keep employees' attendance records. Concerning overtime, the shift foremen issue overtime, but the lead may pass along that information to employees in the department. Dry end leads do not fill in for shift foremen in the latter's absence.

The evidence fails to establish that the dry end leads exercise any supervisory authorities with independent judgment. They work together with employees on their shifts, and their daily routine is similar to the employees'. In effect, the dry end leads have a role of more experienced employees working with and directing less experienced employees in their work, and this does not confer on them supervisory status. *Brown & Root*, 314 NLRB at 22. Accordingly, the dry end leads are not statutory supervisors and are included in the unit.

### WET END LEAD

The plant has four wet end leads; one is assigned to a shift. Like other leads, they carry a non-exempt status and are eligible for overtime and TIPS bonuses. They report to shift foremen,

who are not eligible for overtime and TIPS bonuses. There is no additional educational requirement or specific prior experience for wet end lead positions.

Wet end leads are responsible for maintaining a smooth operation in the wet area by insuring that the required production materials go into the right machines. They work with employees, machines, and materials involved in the production process and spend about 95 percent of their time doing the same tasks as the employees. They also spend about 5 percent of their time filling out reports on the quality of the products. They also work with employees to resolve whatever problems that may arise.

Wet end leads may assign employees to different machines when there is a need in the department or when the employees go on breaks. They may not approve overtime or leave requests; shift foremen process leave requests. They do not attend supervisory meetings or keep employee's attendance records. They have no desk or office. The record does not reflect whether they may substitute for their supervisors in the latter's absence.

The evidence fails to establish that the wet end leads exercise any supervisory authority with independent judgment. As they spend 95 percent of their time doing the same tasks as other employees, any exercise of supervisory authority would be too insubstantial to confer supervisory status. *Brown & Root*, 314 NLRB at 20-21 (finding that insubstantial, irregular, and sporadic assumption of supervisory duties does not confer one supervisory status.) Accordingly, the wet end leads are included in the unit.

#### MISCELLANEOUS LEAD

The plant has one miscellaneous lead. He is a nonexempt employee and, therefore, is eligible for overtime and bonuses. He reports to the maintenance supervisor who is an exempt employee and is not eligible for overtime and TIPS bonuses. The record does not reflect whether there are additional requirements for the miscellaneous lead position.

Plant Manager Daugherty described miscellaneous employees as catch-all people who spend a major part of their time in cleaning. The miscellaneous lead has a rather routine set of tasks and works with three or four miscellaneous employees to accomplish these tasks. He confers with the general foreman, maintenance manager, production manager, and other departments to find out "what items need to be worked on, cleaned or taken care of." He then assigns the tasks to the employees. He is to make sure that the tasks are done properly.



The miscellaneous lead has no authority in prioritizing the work assignments that he receives. When faced with multiple tasks, he would seek instructions from either the general foreman or the production manager with regard to the priority of the assignments. In effect, he merely passes along to the miscellaneous employees the information that he receives. He does have a desk and office, but the record does not indicate how much time he spends in the office or what he does there.

The evidence does not demonstrate that the miscellaneous lead exercises supervisory authority with independent judgment. Even though he deals with supervisors and managers from different departments, his role is limited to receiving the information as to what is to be done and passing the information to other miscellaneous employees. As the Board held, “[e]mployees who are merely conduits for relaying management information to other employees are not supervisors.” *Chrome Deposit*, 323 NLRB at 963. Accordingly, the miscellaneous lead is not a statutory supervisor and is included in the unit.

#### MASTER MECHANIC

The plant has one master mechanic and 14 mechanics in the maintenance department. The master mechanic carries a non-exempt status and is eligible for overtime and TIPS bonuses. He reports to the mechanical supervisor who is an exempt employee. He shares an office with the master electrician where he spends about 15 percent of his time. The record does not reflect whether there is an additional educational or work experience requirement for the master mechanic position.

The master mechanic works together with other mechanics to ensure that the machines work properly. Like other mechanics, he has his own mechanical tools, but what distinguishes him from the mechanics is that he has a senior level of knowledge about the mechanical systems. As a result, when he is not at work, he is the first one that the mechanics would call when they cannot resolve the problems themselves. He is also responsible for all the mechanics’ work and ensures that they do their jobs properly. He communicates with the mechanics and the mechanic supervisor frequently throughout the day, with his radio, to find out whether there is something to be done.

He does not make job assignments to the mechanics. He receives the assignments from the mechanic supervisor and passes them along to the appropriate mechanics. The Petitioner’s

witness, mechanic Fellows, testified that the mechanics usually know what to do when they get calls from other leads in the plant. They call the master mechanic only when they need help. He does not process leave requests; the mechanic supervisor does.

The master mechanic does not track employees' attendance records. Mechanic Fellows testified that he received two performance evaluations that were done by the master mechanic and the mechanic supervisor. However, the master mechanic was not present when the mechanic supervisor went over the evaluations with Fellows. Furthermore, there is no evidence whether the two evaluations had any impact on his pay or status. The record does not reflect that the master mechanic has the authority to grant overtime; however, Fellows testified that the master mechanic used to come around and asked the mechanics whether they wanted to work overtime.

The evidence fails to establish that the master mechanic exercises any supervisory authority with independent judgment. He does not grant leave or overtime to the mechanics. Evidently, the master mechanic is more knowledgeable about the mechanical systems in the plant and works together with other mechanics to resolve mechanical problems. As the Board held in *Brown & Root*, the employees who merely exercise greater experience in directing less skilled employees are not statutory supervisors. 314 NLRB at 22. Accordingly, the master mechanic is included in the unit.

#### MASTER ELECTRICIAN

The plant has one master electrician and five electricians in the maintenance department. The master electrician carries a non-exempt status and is eligible for overtime and TIPS bonuses. He reports to the electrical supervisor, who is an exempt employee and is ineligible for overtime and TIPS bonuses. The record does not reflect whether there is an additional educational requirement for this position.

The master electrician spends lots of his time troubleshooting. He also works with the electrical supervisor to review work orders from different departments. He is responsible for ensuring that the work is done properly. Thus, he does check on work orders completed by the electricians. He also spends about 15 percent of his time in the office that he shares with the master mechanic.

The record does not indicate that the master electrician assigns work to the electricians. The Petitioner's witness, electrician Keel, testified that, at the beginning of his shift, he talks to

the electrician on the prior shift to find out if there are problems. If there are no problems, Keel follows a normal routine in checking on the machines in the plant. Because Keel has a radio himself, employees in different departments may call him directly when they have problems. Keel said that the master electrician checks on his work, but the record does not indicate what the master electrician does if he is not satisfied with the work. According to Keel, when the master electrician is not there, Keel would try to deal with the problems himself and would call the master electrician only as the last resort.

Keel also stated that he has not received a performance evaluation from the master electrician. He recently submitted a leave request to the master electrician but did not know who was responsible for processing and authorizing it.

The evidence fails to establish that the master electrician exercises any supervisory authority with independent judgment. At best, the Petitioner was able to show that the master electrician has a superior electrical knowledge, and this does not confer on him supervisory status. *Chrome Deposit*, 323 NLRB at 963. Accordingly, the master electrician is included in the unit.

#### STOREKEEPER

The plant has one storekeeper. He is a non-exempt employee and, therefore, is eligible for overtime and TIPS bonuses. He reports to the plant purchasing manager who is an exempt employee and is not eligible for overtime and TIPS bonuses. There is no additional educational requirement for his position. But, he is required to have some computer skill and drive a forklift.

The storekeeper works in the supply area of the plant which is part of the maintenance department. He spends about 90 percent of his time there. Also working in the supply area are the purchasing manager, the purchasing agent, and a miscellaneous employee. This miscellaneous employee works in the storeroom helping the storekeeper out with various tasks.

The storekeeper is responsible for stock items and processes purchasing orders for items that are not in stock. When employees get things from the storeroom, he makes sure that they sign them out. (Mechanic Fellows testified that he has a key to the storeroom so that he can get whatever he wants when the storekeeper is not there.) If certain items are not in stock, the storekeeper must get the necessary information from the employees to complete purchase requests. The storekeeper has pre-approved purchasing orders with which he may purchase a

number of specified items on his own. For other items, he must submit the purchasing order(s) to the plant manager to be approved. The storekeeper also has a list of approved vendors from whom he orders what is requested. The Employer tells him specifically the brands or quality that he must order. When the requested items come in, he notifies the employees who requested them.

Because of the nature of his position, the storekeeper interacts frequently with other employees. The Petitioner's witness, mechanic Fellows, testified that when he works on the same shift with the storekeeper, he has face-to-face interaction with the latter more than once a day. Similarly, electrician Keel, also the Petitioner's witness, testified that he deals with the storekeeper "usually a couple times a day at least" in getting parts and materials that he needs. Furthermore, both Fellows and Keel said that they asked and worked with the storekeeper to order the parts for their jobs.

Even though the record shows that the storekeeper gives instruction to the miscellaneous employee who works in the storeroom, there is no evidence that the storekeeper has the authority to discipline, fire, or transfer this employee. In addition, there is no evidence establishing whether the storekeeper has the authority to prevent employees from taking things that they need from the storeroom. As discussed above, the storekeeper follows the Employer's instructions with regard to what items to order and from whom.

The evidence fails to establish that the storekeeper exercises supervisory authority with independent judgment. Overall, the record shows that the storekeeper's duties are routine and clerical in nature, and the Board has held that individuals in these positions are not supervisors. *Sears, Roebuck and Co.*, 292 NLRB at 754-755. Accordingly, the storekeeper is included in the unit.

## **B. Community of Interest**

The community-of-interest concept is used by the Board in determining whether an employee should be included in a unit. In a manufacturing setting, this concept draws a distinction between office clericals and plant clericals. *Cook Composite and Polymers Co.*, 313 NLRB 1105, 1108 (1994). The determination whether employees are plant clericals or office clericals rests on "whether the employees' duties are related to the production or service process (plant clericals) or related to general office operations (office clericals)." *Syracuse Univ.*, 325

NLRB 162, 168 (1997). The Board pointed out that “[c]lericals whose principal functions and duties relate to the general office operations and are performed within the general office itself, are office clericals who do not have a close community of interest with a production unit.” *Cook Composite*, 313 NLRB at 1108. Therefore, office clericals should be excluded from the unit. On the other hand, “employees who perform clerical duties in close association with the production process and with production or maintenance employees are considered plant clericals and are included in the same unit as production employees.” *Nor-Cal Ready Mix*, 327 NLRB No. 187, \*8 (1999).

In *Nor-Cal Ready Mix*, the Board held that an employee was a plant clerical and should be included in the unit. *Id.* Factually, this case involved the Employer’s challenge of a ballot cast by a clerical employee alleging that she was an office clerical. Her duties were described in the decision as follows

[O]ne of her duties at the time of the election was to maintain records on the computer. She maintains all repair orders on each of the Employer’s trucks, prices and inventory stock of parts, and records on vendors . . . Drivers submit pretrip reports to [her] where they note any problems with the truck to which they have been assigned. The pretrip reports are given to the mechanics. Mechanics fill out repair orders, and, after the repairs are completed, submit them to [her] for filing. When the mechanics need parts for repairs, they go to [her] and tell her what to purchase. She then contacts vendors and orders the parts . . . [She] receives the parts and places them in the stockroom. She also checks the stockroom to see whether any of the Employer’s regular stock needs replenishing.

*Id.* at 7. In including her in the unit, the Board pointed out that her duties were closely related to the maintenance functions. This employee’s job duties markedly resemble the job duties of the storekeeper, as discussed above, and the maintenance planner, as discussed below.

In support for its position that the storekeeper and the maintenance planner should be excluded from the unit for lack to community of interest, the Petitioner cited 10 cases. In addition to its failure to illustrate how these cases may support its position, the Petitioner did not note that 9 of the 10 cases it cited did not pertain to a manufacturing setting. Only one case, *NLRB v. Paper Manufacturers Co.*, 786 F.2d 163 (3<sup>rd</sup> Cir. 1986), was relevant to the issue here. The Petitioner’s discussion of this Third Circuit Court opinion, however, was limited to the list of seven factors relevant to the determination of an appropriate unit. *Id.* at 167. The court did not specify that the employees in question must meet all seven factors to be included in the unit.

## STOREKEEPER

As discussed above, the storekeeper's duties markedly resemble the duties of the employee in question in *Nor-Cal Ready Mix*. The storekeeper's function is integrally related to the functions of the production and maintenance employees. His primary duty is to provide the production and maintenance employees with parts or materials that they need in performing their jobs. He drives forklifts just like employees in the shipping unit, and his office is located in the maintenance department and separated from the main offices. He works closely with a miscellaneous employee in the storeroom with whom he is subject to the supervision of the purchasing manager. In sum, the storekeeper is a plant clerical and is included in the unit.

## MAINTENANCE PLANNER

The plant has one maintenance planner. He is a non-exempt employee and is eligible for overtime and TIPS bonuses. He reports to the maintenance supervisor who is not eligible for overtime or TIPS bonuses. The record does not indicate whether there is any additional educational requirement for this position. The Employer, however, prefers someone with knowledge of mechanical and electrical systems.

The maintenance planner has an office in the plant office area which is located on the second floor. The main (or front) offices are located on the first floor and are separated from the plant offices. On the second floor are the offices of the production and maintenance departments as well as the plant engineers. The employees of the production department who have offices on this floor are the production manager, production superintendents, and general foremen. Within the maintenance department, the maintenance manager, maintenance planner, mechanical supervisor, and electrical supervisor also have their offices here. The conference room is also on this floor. There are two stairways leading up to this area which remains open at all times. Plant Manager Daugherty said that in addition to the individuals with offices on the second floor, the supervisors go up there "from time to time." The record does not indicate whether regular employees go up there often.

The maintenance planner works with work orders from both managerial and regular employees in the plant. For example, when an employee in the production area needs maintenance work on a machine, he would input that information into one of the computer terminals in the plant. The maintenance planner would review that work order for completeness

or clarity. If the work order is incomplete or unclear, the maintenance planner would talk to the person who input the information to get additional or clarifying details. The maintenance planner then prints out the work order and gives it to the maintenance manager or supervisor who in turn assigns the tasks to their respective employees. Upon completion of the tasks, employees are required to enter the information into the computer. The maintenance planner again reviews this information to make sure that it is accurate and complete. If not, he would talk to the employee who worked on the order to get additional or clarifying details.

Because it is important to have complete and accurate information on work orders, the maintenance planner frequently has to show the mechanics, electricians, and other employees how to enter work orders correctly. In the words of mechanic Fellows',

[The maintenance planner is] the one that schooled us on putting work orders into the computer. Of course he's all the time calling down there and telling somebody that they didn't put it in there right or something and he pretty much makes everybody aggravated over the deal.

Fellows also said that he interacts with the maintenance planner two or three times a week concerning work orders and that his supervisor told him to do as the maintenance planner wants. In addition, electrician Keel said that he deals with the maintenance planner about once in several weeks concerning work orders.

Furthermore, the maintenance planner must also prepare reports on work orders to be submitted to the maintenance manager or to the plant manager himself. These could be weekly or monthly reports containing information such as the number of work orders completed, the number of work orders not completed, and costs. The maintenance manager tells him the types of reports to generate and when to generate them.

Neither party contends that the maintenance planner has any supervisory authority. The evidence fails to establish that he has ever disciplined, hired, or fired anyone or what he may do if an employee refuses to obey his instruction in entering information on work orders.

The maintenance planner's duties also resemble that of the employees described in *Nor-Cal Ready Mix, supra*. Because of the nature of his position, the maintenance planner reports directly to the maintenance supervisor who oversees, *inter alia*, the mechanics and electricians. His office is located in the maintenance department and is separated from the main offices. Even though he does not work as closely with the production and maintenance employees as the storekeeper, his main function is to serve the production and maintenance departments by

ensuring that work orders are performed by processing and distributing them to the right departments. Furthermore, the record does not establish that he works with other office clericals. In sum, the maintenance planner is a plant clerical and, therefore, should be included in the unit.

In light of the above discussion, the evidence fails to establish that the 21 employees in question exercise any supervisory authority with independent judgment. In addition, the storekeeper and the maintenance planner are plant clericals and share a community of interest with other employees in the unit. I shall therefore include the aforementioned 22 employees in the unit. As a result, there are approximately 118 employees in the unit found appropriate herein.

5. In accordance with Section 102.97 of the Board's Rules and Regulations as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled even if a Request for Review is filed, unless the Board expressly directs otherwise.

#### CLASSIFICATION INDEX

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